

## CHAPTER 5 -- CIVIL RIGHTS

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## CHAPTER 5

### CIVIL RIGHTS

#### I. OVERVIEW

The federal and state civil rights requirements associated with CDBG grants are designed to ensure equal opportunity and access to all benefits derived from the Montana CDBG Program. The entire chapter must be read thoroughly and all applicable instructions followed.

There are several civil rights responsibilities of Grantees that must be completed during project start-up activities (to be completed prior to CDBG approval of any project drawdowns), especially **required civil rights compliance resolutions that must be passed by the local government**. Local government resolutions required during project start-up are resolutions for: 1) fair housing, 2) equal employment opportunity, 3) Hatch Act political activities restrictions, and 4) ADA and Section 504 handicapped accessibility and complaint resolution. **Review the civil rights laws and regulations and their summaries in this chapter**. A checklist of Civil Rights Responsibilities is found in **Exhibit 5-U**.

#### **A. Essential activities at project start-up include the following civil rights activities:**

##### **1. Take action to support Fair Housing:**

- a. **Adopt a Fair Housing Resolution** (Exhibit 5-M, sample *Fair Housing Resolution*).
- b. **Post fair housing notices and posters** (Exhibit 5-N, sample *Fair Housing Poster*).
- c. **Publicize affirmative fair housing rights and responsibilities**.
- d. **Distribute fair housing brochures**. See **Exhibit 5-O**, *Fair Housing Handout and Complaint Pamphlet*, and other brochures available from MDOC/CDBG) explaining fair housing rights, practices and statutory requirements. **Exhibit 5-P** provides a sample housing program notice.

##### **2. Take the following steps to meet CDBG's requirements concerning: the *Americans with Disabilities Act of 1990 (ADA)* and *Section 504 of the Rehabilitation Act of 1973*.**

- a. **Adopt ADA and Section 504 complaint resolution procedures** to ensure compliance with Section 504 of the *Rehabilitation Act of 1973* and the *Americans with Disabilities Act of 1990 (ADA)*. These procedures must allow for prompt and equitable resolution of charges alleging non-compliance with ADA. (See **Exhibit 5-R** for sample *Section 504 and ADA Complaint Resolution Procedures*).
- b. **Conduct an ADA Self-Evaluation Inventory (Analysis of Impediments) of local public facilities and buildings** to determine the extent of local compliance with ADA requirements.
- c. **Prepare an ADA Transition Plan for Handicapped Accessibility to Public Facilities**. See pages 5-22 and following for more details about ADA self-evaluation and ADA transition plan requirements. Review the example given in **Exhibit 5-S**, *Sample ADA Self-Evaluation*

*Inventory and Transition Plan* and see **Exhibit 5-T** for state and national contacts for ADA Information and Assistance.

- d. **Possible exception:** If doing this ADA work of inventory, analysis, transition plan and resolutions at project start-up would cause a major hardship for your project given existing local resources during the project's start-up phase, please contact your project's CDBG liaison to discuss an alternative timetable and plan for meeting these requirements as soon as feasible in your project schedule.
3. **Adopt a Hatch Act Resolution (Exhibit 5-Q, sample *Hatch Act Resolution*), and:**
  - inform local government officials and CDBG grantee employees of the provisions of the Hatch Act; and
  - designate a local government representative to disseminate the information and brochure regarding Hatch Act responsibilities.
4. **Adopt an Equal Employment Opportunity (EEO) Policy Resolution (Exhibit 5-A, sample *Equal Employment Opportunity Policy*).**

**Nondiscrimination also applies to employment practices.** CDBG grantees may not deny employment on the basis of race, color, national origin, age, sex, or handicap. Review existing local employment policies and include the EEO policy in your local government policy manual/handbook. Inform local government officials and employees, the public, and those applying for employment with the local government of the provisions of your EEO policy.

Designate a person to disseminate the information and oversee EEO responsibilities and compliance. See **page 5-8** and following below for more about **equal employment opportunity compliance**, which can be pursued in a number of ways, such as:

- Job opening advertisements must include the following phrase:  
“(Grantee or Contractor Name) is an Equal Opportunity Employer.  
Minorities and women are encouraged to apply.”
  - Notify nearby minority organizations of job openings.
  - Maintain employment records related to equal employment opportunity.
5. **Publish Exhibit 5-B (sample *Section 3 Public Notice: Economic Opportunities for Low-Income and Moderate Persons*) or its equivalent** -- in order to inform the community of employment and business opportunities and to demonstrate compliance with Section 3 requirements. Note: In addition to the existing text in Exhibit 5-B, place the name, phone number, and mailing address of the person(s) designated to be contacted for further information on the notice in Exhibit 5-B.
  6. **Place the required appropriate contract language regarding civil rights in bid documents and in all contracts.** See Chapter 3, Procurement and **Exhibit 3-F**.

**B. During the course of your project after start-up is completed:**

- ☐ **Take action during the entire course of your project to ensure that no one is discriminated against in receiving services and benefits from the CDBG project.** Generally, minority persons should benefit at least in proportion to their percentage of the community's or project area's overall population.
- ☐ **Gather and record the information that shows how your project meets requirements that are applicable to those CDBG projects with direct benefits to individuals:** Keep records of **direct beneficiaries** by using **Exhibit 5-D, Individual Direct Benefit Recording Form to be Completed by Head of Household** and **Exhibit 5-E, Direct Benefit Summary Data (Exhibit 5-E = Exhibit 13-D which is needed for Project Closeout).**
- ☐ **Complete Exhibit 5-J, Contract Reporting Form, at the time that each contract and subcontract (including contractors and subcontractors that are not minority owned) exceeding \$10,000 is awarded.**
- ☐ **Be diligent and consistent in implementing the project's civil rights responsibilities and be ready to explain to local citizens the purpose and importance of the civil rights laws and requirements in the CDBG program.**

The federal and state civil rights requirements associated with CDBG grants are designed to ensure equal opportunity and access to all benefits derived from the Montana CDBG Program. **The purpose of the laws is to protect people from discrimination on the basis of:**

- |   |  |
|---|--|
| <input type="checkbox"/> <b>Age</b>                         | <input type="checkbox"/> <b>Gender</b>                                 |
| <input type="checkbox"/> <b>Color</b>                       | <input type="checkbox"/> <b>Race</b>                                   |
| <input type="checkbox"/> <b>Creed (fundamental beliefs)</b> | <input type="checkbox"/> <b>Religion</b>                               |
| <input type="checkbox"/> <b>Marital Status</b>              | <input type="checkbox"/> <b>Political Ideas</b>                        |
| <input type="checkbox"/> <b>National Origin</b>             | <input type="checkbox"/> <b>Family Status (Families With Children)</b> |
| <input type="checkbox"/> <b>Physical or Mental Handicap</b> |  |

Population groups specifically protected by the provisions of these laws include:

- **Minorities (e.g., Blacks, Hispanics, Native Americans, Alaskan Natives, Asians, and Pacific Islanders);**
- **Women;**
- **Groups distinguished by age (e.g., elderly); and**
- **Physically or mentally handicapped persons.**

For purposes of the CDBG Program, **the groups listed above (commonly referred to as *protected groups*) are specifically protected from discrimination in the following areas:**

- ☐ **Housing:** Generally this includes the sale or rental of housing, and the financing, advertising or provision of brokerage services. There are other specific acts of discrimination that are equally illegal. Nondiscrimination requirements in this area are referred to as *fair housing*;

- ❑ **Employment:** This applies to government employment, employment by government contractors or subcontractors, and employment under all construction contracts funded in whole or in part with federal money. These provisions are referred to as *equal employment opportunity*; and
- ❑ **Participation in or Benefits Derived from CDBG Funded Activities:** This means that no one who is eligible may be excluded from participating in any CDBG-funded activity, nor may they be denied any benefits resulting from activities funded in whole or in part with CDBG money.

## II. APPLICABLE REQUIREMENTS

Several federal and state statutes, portions of the CDBG regulations, and three Presidential Executive Orders contain *civil rights* and *affirmative action* provisions that apply to all programs funded with federal monies. Civil rights compliance and monitoring responsibilities are outlined in the following summary of federal and state laws, Executive Orders and CDBG program regulations.

### A. FEDERAL

1. **The Federal Hatch Act** (5 USC 1501, et seq; 5 CFR, Part 151) **restricts the political activities of certain public employees who may be connected with federally funded programs.** In passing the Hatch Act in 1939, Congress declared that the partisan political activities of federal employees, employees of the District of Columbia government, and certain employees of state and local governments must be limited in order for public institutions to function fairly and effectively. <http://www.osc.gov/hatchact.htm>

The Hatch means that employees in agencies who receive federal financial assistance may not use official authority to influence or interfere with the outcomes of elections or nominations, or to directly or indirectly coerce contributions from subordinates to support a political party or candidate.

**To comply with the Hatch Act, CDBG grantees are required to:**

- Inform all employees of the provisions of the Hatch Act, and
- Adopt a policy of compliance with Hatch Act regulations. **Exhibit 5-Q**, sample *Hatch Act Resolution*, has been provided for use by CDBG grantees to document their efforts to comply with Hatch Act requirements.

**To assist with Hatch Act compliance**, each grantee should obtain a copy of the *U.S. Merit System Protection Board (MSPB)* brochure entitled, *Political Activity and the State and Local Employee*, which provides additional information about the Hatch Act, available at: [http://www.osc.gov/documents/hatchact/ha\\_sta.pdf](http://www.osc.gov/documents/hatchact/ha_sta.pdf)

Advisory opinions concerning Hatch Act issues may be obtained directly from the MSPB Office of the Special Counsel by using their toll-free telephone number: **Toll Free: 1-800-209-8960, V/TDD: (800) 877-8339**. Established by the Civil Service Reform Act of 1978, the

MSPB Board serves as guardian of the Federal Government's merit-based system of employment, principally by hearing and deciding appeals from Federal employees of removals and other major personnel actions. The Board also hears and decides other types of civil service cases, reviews regulations of the Office of Personnel Management, and conducts studies of the merit systems. Additional information may be obtained from the MSPB's web site: [www.mspb.gov](http://www.mspb.gov).

2. **Title VII of the Civil Rights Act of 1964**. Title VII provides that no person in the United States shall on the ground of race, color or national origin, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. <http://www.eeoc.gov/policy/vii.html>

**Action required:** CDBG grantees must adopt and enforce a nondiscrimination policy designed to ensure that all project activities funded in whole or in part with CDBG funds are conducted in a manner that will not cause discrimination. This means the program must be administered in a nondiscriminatory manner to provide benefits on an equal, non-segregated basis.

**Nondiscrimination also applies to employment practices.** CDBG grantees may not deny employment on the basis of race, color, national origin, age, sex, or handicap. **Furthermore, affirmative action and equal employment opportunity policies are fundamental aspects of the CDBG program.** (See **Exhibit 5-A** for an example of an *Equal Employment Opportunity Policy*).

3. **The Cranston-Gonzalez National Affordable Housing Act of 1990**, Title II, Section 282 [42 USC 12832]. The nondiscrimination clause of the *National Affordable Housing Act* of 1990, <http://www.hud.gov/offices/cpd/affordablehousing>, states that:

No person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 (Labor) shall also apply to any such program or activity.

4. **Section 504 of the Rehabilitation Act of 1973**, as amended (29 USC 794). Section 504 is explicitly incorporated into Title II, Subtitle F, **§282** of the ***National Affordable Housing Act*** of 1990. Section 504 states that:

No otherwise qualified handicapped individual in the United States, as defined in section (7) shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

<http://www.section508.gov/index.cfm?FuseAction=Content&ID=15>

Although similar in wording, **§504 of the *Rehabilitation Act*** differs conceptually from **Title VII of the *Civil Rights Act*** and **§282 of the *National Affordable Housing Act***.

- ❖ **The premise of Title VII and §282** is that there are no inherent differences or inequalities between the general public and the persons protected by these provisions; therefore, there should be no differential treatment in the administration of federal programs.
- ❖ **The premise of §504** is that **affirmative steps must be taken to ensure that persons who are inherently unequal** (the handicapped) **are not discriminated against as a result of administrative procedures or CDBG project activities**. Handicapped persons may need different treatment in order to be afforded equal access to federally assisted programs and activities; thus identical treatment may, in fact, constitute discrimination.
- ❖ Section 504 provisions are explicitly incorporated into Housing and Urban Development (HUD) implementing regulations at 24 CFR, Part 8, *Nondiscrimination Based on Handicap in Federally-assisted Programs and Activities of the Department of Housing and Urban Development*. [http://www.access.gpo.gov/nara/cfr/waisidx\\_98/24cfr8\\_98.html](http://www.access.gpo.gov/nara/cfr/waisidx_98/24cfr8_98.html)
- ❖ Definitions of **handicapped family** and **handicapped person**:

**Handicapped family**: As outlined in Appendix B to 24 CFR, Part 8, lower-income housing and the Section 8 housing assistance programs operate under ***the following definition of handicapped person or family*** found in §3(b)(3), *United States Housing Act of 1937*, as amended:

Families consisting of a single person in the case of a person who is at least sixty-two years of age or is under a disability; or two or more persons, the head of which (or the spouse) is sixty-two years of age or over or is under a disability as defined in §223 of the Social Security Act or in §102 of the Developmental Disabilities Services and Facilities Construction Amendments of 1970 or is handicapped.

**Handicapped person**: A person is considered ***handicapped*** if such person is determined, pursuant to regulations issued by the Secretary, to have:

an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently; and (C) is of such a nature that such ability could be improved by more suitable housing conditions. A person shall also be considered handicapped if such person is a developmentally disabled individual as defined in Section 102(a)(5) of the Developmental Disabilities Services and Facilities Construction Amendments of 1950.

**To comply with Section 504's protection of the rights of handicapped persons**, CDBG grantees are required to:

- a. provide qualified handicapped persons with benefits and services that are as effective as those provided to non-handicapped individuals;

- b. avoid aiding or perpetuating discrimination against qualified handicapped persons;
  - c. afford qualified handicapped persons with the opportunity to participate as members of planning or advisory bodies; and
  - d. utilize criteria or methods of administration that do not subject qualified handicapped persons to discrimination.
5. **The Americans with Disabilities Act (ADA) of 1990.** The Americans with Disabilities Act (ADA) of 1990 **guarantees equal opportunity in employment, public accommodations, transportation, state and local government services, and telecommunications, for individuals with disabilities.** The ADA became law on July 26, 1990, and became fully effective on January 26, 1992. <http://www.usdoj.gov/crt/ada/adahom1.htm>

The ADA borrows much of its substantive framework and language from Section 504 of the *Rehabilitation Act* of 1973. Therefore, if the grantee works toward compliance, or is in compliance with Section 504, it will also generally be in compliance with ADA, and vice versa.

**US Department of Justice website for ADA information/technical assistance:**  
<http://www.usdoj.gov/crt/ada/adahom1.htm>

6. **Architectural Barriers Act of 1968** (42 USC 4151-4157). HUD regulations at 24 CFR, Part 40, prescribe standards for the design, construction, and alteration of *publicly owned* residential structures to ensure that physically handicapped persons will have ready access to, and use of, such structures. Appendix A of 24 CFR, Part 40, provides a detailed discussion of the *Uniform Federal Accessibility Standards*. <http://www.access-board.gov/about/laws/ABA.htm>
7. **Fire Administration Authorization Act of 1992** [as implemented under provisions of 24 CFR 8.4(b)(1)(iii) and (iv); 24 CFR 8.32, Uniform Federal Accessibility Standards (UFAS) and UFAS 4.28, Alarms]. These regulations state the conditions under which fire alarm systems must be equipped with visual and/or sensory alarm systems (or appropriate wiring for later installation of same), as a reasonable accommodation to persons with disabilities.  
<http://www.hud.gov/offices/cpd/lawsregs/notices/priorto95/cpd9405.pdf>
8. **The Age Discrimination Act of 1975** (42 U.S.C. 6101 et seq.) is explicitly incorporated into Title II, Subtitle F, §282 of the *National Affordable Housing Act* of 1990.

CDBG grantees are responsible for ensuring that no individuals will be discriminated against on the basis of age. The *Age Discrimination Act* states that:

No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.  
[http://www.dol.gov/oasam/regs/statutes/age\\_act.htm](http://www.dol.gov/oasam/regs/statutes/age_act.htm)



9. **Equal Employment Opportunities under HUD Assisted Contracts -- Executive Order 11246, as amended by Executive Order 11375.**

**Nondiscrimination in employment is required for all federally assisted contracts.** Grantees are required to institute affirmative actions **to ensure equality of opportunity in all aspects of employment** and implement assurances that the regulations are adhered to.

Consistent with rules and regulations promulgated by the U.S. Department of Labor, HUD has prescribed standards and procedures for compliance with Executive Order 11246 in 24 CFR, Part 7, *Equal Employment Opportunity*.

Under the terms of Executive Order 11246, CDBG grantees are required to:

- ✓ include the *equal opportunity clause* in all non-exempt federally-assisted contracts for more than \$10,000, as set forth in §202 of Executive Order 11246; and
- ✓ ensure that all federally-assisted construction contractors and subcontractors on a CDBG-assisted construction project take affirmative actions to ensure that employees and applicants for employment are not discriminated against because of race, color, religion, sex, or national origin.
- ✓ Executive Order 11246: <http://www.dol.gov/esa/regs/statutes/ofccp/eo11246.htm>

The U.S. Equal Employment Opportunity Commission has a website (with *Questions And Answers concerning Federal Laws Prohibiting Job Discrimination*) that you can consult for additional guidance: <http://www.eeoc.gov/facts/qanda.html>

10. **Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) -- as amended by the Fair Housing Amendments Act of 1988**, provides for **fair housing** throughout the United States. <http://www.hud.gov/offices/fheo/progdesc/title8.cfm>

As of March 12, 1989, Title VIII provisions also include, as a protected group (for purposes of furthering fair housing), *families with children*. **Title VIII requires that affirmative actions be taken by CDBG grantees to further fair housing opportunities within their jurisdictions.**

CDBG grantees must comply with Title VIII of the Civil Rights Act of 1968, as amended, **by administering all programs and activities related to housing and community development in a manner that affirmatively furthers fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.**

11. **Fair Housing Act, Executive Order 11063 -- as amended by Executive Order 12259 (Equal Opportunity in Housing)**. <http://www.archives.gov/federal-register/codification/executive-order/12259.html>

The Fair Housing Act requires HUD **to take all actions necessary and appropriate to prevent discrimination in housing and related facilities that are funded in whole or in**

**part with federal financial assistance. Federally funded activities that fall under these provisions include:**

- mortgage insurance
- guaranty programs, and
- grants used to acquire, clear, relocate or otherwise prepare a housing site.

**The Act's provisions are also binding on housing-related practices of lending institutions**, insofar as such practices relate to loans ensured and guaranteed by the federal government.

**Each CDBG grantee must affirmatively further fair housing.** Title VIII of the *Civil Rights Act* and Executive Orders 11063 and 12259 require the CDBG grantee to:

- a. promote maximum choice within the community's total housing supply;
- b. lessen racial, ethnic, and economic concentrations; and
- c. facilitate desegregation and racially inclusive patterns in the occupancy and use of public facilities.

12. **Section 3 of the Housing and Urban Development Act of 1968, as amended.** <http://www.hud.gov/offices/fheo/section3/section3.cfm> Section 3 requires that to the greatest extent feasible:

- ❑ **opportunities for training and employment must be given to lower-income residents of CDBG-assisted projects; and**
- ❑ **that contracts for work in connection with such projects should be awarded to business concerns located in, or owned in substantial part by "project area" residents.**

**In applying Section 3 regulations to CDBG projects**, the project area is determined as follows:

- For municipalities, the project area is the county in which the municipality is located. First consideration should be given to persons living in or businesses located in or closest to the project activities;
- For counties, in most cases, the entire county will be considered the Section 3 project area;
- For Community Housing Development Organizations (CHDOs), the grantee should check with their assigned CDBG Program Specialist to determine the appropriate project area for their CDBG program activities.

13. **Women's Business Enterprise and Minority Business Enterprise -- Executive Orders 11625, 12138 and 12432.**

<http://www.hud.gov/offices/cpd/affordablehousing/training/web/crosscutting/employment/eeominority.cfm> These regulations establish **the development of Women's and Minority Business Enterprises (DBEs) as a national priority.**

- **A list of Montana Disadvantaged Business Enterprises** created by the Montana Department of Transportation (MDT) may be found by calling MDT at (406) 444-6337 or downloaded from their web site:  
<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml> .

The HUD regulations in 24CFR, Part 85 establish procurement standards to be followed in federal assistance programs. Among the provisions of 24 CFR, Part 85 is **the requirement that grantees and any sub-grantees take all necessary affirmative steps to ensure that DBEs in labor surplus areas are used when possible in the procurement of goods and services for CDBG funded activities.**

[http://www.hud.gov/offices/lead/lhc/24\\_CFRPART\\_85.pdf](http://www.hud.gov/offices/lead/lhc/24_CFRPART_85.pdf)

**In order to accomplish this DBE-related objective, CDBG grantees must take the following affirmative steps:**

- a. place qualified small and minority businesses and women's business enterprises on bid solicitation lists;
- b. ensure that small and minority businesses and women's business enterprises are solicited whenever they are potential sources of goods or services;
- c. divide total requirements -- when economically feasible and consistent with state law -- into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- d. establish delivery schedules which encourage participation by small and minority businesses and women's business enterprises whenever possible;
- e. use the services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and
- f. require the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in the above paragraphs.

14. **24 CFR, Part 85 – HUD Administrative Requirements for Grants (Basic Federal Regulations)**

***HUD Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments*** can be found at:

[http://www.access.gpo.gov/nara/cfr/waisidx\\_99/24cfr85\\_99.html](http://www.access.gpo.gov/nara/cfr/waisidx_99/24cfr85_99.html)

and

<http://www.hud.gov/offices/cpo/grantees/24cfr84.doc>

15. **EEOC Compliance Manual Section on the Prohibition of National Origin Discrimination.**

National origin discrimination means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background.

National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality. Whether an employee or job applicant's ancestry is Mexican, Ukrainian, Filipino, Arab, American Indian, or any other nationality, he or she is entitled to the same employment opportunities as anyone else.

The U.S. Equal Employment Opportunity Commission (EEOC, <http://www.eeoc.gov/>) issued (12/2/02) updated guidance/questions/answers regarding the prohibition against national origin discrimination that is included in Title VII of the Civil Rights Act of 1964. Examples of national origin bias violations covered under Title VII include:

- Employment Decisions: Title VII prohibits any employment decision, including recruitment, hiring, and firing or layoffs, based on national origin.
- Harassment: Title VII prohibits offensive conduct, such as ethnic slurs, that creates a hostile work environment based on national origin. Employers are required to take appropriate steps to prevent and correct unlawful harassment. Likewise, employees are responsible for reporting harassment at an early stage to prevent its escalation.
- Language. *Accent discrimination*: An employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance. *English fluency*: A fluency requirement is only permissible if required for the effective performance of the position for which it is imposed. *English-only rules*: English-only rules must be adopted for nondiscriminatory reasons. An English-only rule may be used if it is needed to promote the safe or efficient operation of the employer's business.

## B. STATE

**Montana Human Rights Statutes -- Title 49.** [http://data.opi.state.mt.us/bills/mca\\_toc/49.htm](http://data.opi.state.mt.us/bills/mca_toc/49.htm)

Portions of Title 49, *Montana's Human Rights statutes*, apply to CDBG grantee's program activities, and are summarized below.

- ❑ In **employment**, §49-2-303 MCA adds **marital status** to the list of protected categories (i.e., grantees and their contractors and subcontractors must not discriminate against married or single persons in their employment practices); and adds **persons with physical and mental handicaps** to the protected categories. In addition, the *Montana Maternity Act*, part of the *Human Rights* statutes in §§49-2-310 and 49-2-311 MCA, prohibits certain employment actions related to pregnant persons in the areas of employment, maternity leave, employee benefits, and employment termination.
- ❑ In **housing**, §49-2-305 MCA lists protected categories that correspond to the federal list of protected categories. As with the employment statutes, protected categories include persons with physical or mental handicaps. Discrimination in housing based on marital status is also prohibited.

- ❑ In addition to **Chapter 2 of Title 49, MCA (*Illegal Discrimination*)**, **Chapter 3 of Title 49, MCA (*Governmental Code of Fair Practices*)** establishes **human rights requirements that apply to CDBG program services or benefits**.

In particular, these regulations address hiring and employment policies and practices. This chapter of state law lists race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, and national origin as protected groups.

- ❑ **Chapter 4 of Title 49, MCA (*Rights of the Handicapped*)** establishes requirements and policies regarding *handicapped persons*, and defines the rights of handicapped persons under state law, especially the right to nondiscrimination in employment and housing.
- ❑ **Montana's administrative rules implementing Title 49, MCA, contain minimum requirements.** Administrative Rule 24.9.805 requires that each employer subject to the U.S. EEOC/Equal Employment Opportunity Commission (i.e., those with 15 or more employees) maintain records on the gender, age, and race of employees.
  - ❑ Those employers not subject to EEOC guidelines (those with less than 15 employees) are also urged to maintain records on race and gender.
  - ❑ In any case, CDBG regulations require that grantees maintain beneficiary data. (See Section III, GRANTEE RESPONSIBILITIES).
  - ❑ Any records employers are required to maintain must be kept on file for three years after program close-out, or through the period of affordability, whichever is greater.
  - ❑ All employment records should be kept at least 6 months, including applications for employment. Keep these records in the CDBG Civil Rights File.

### III. GRANTEE RESPONSIBILITIES

There are **six general areas that must be documented** during implementation of your CDBG program in order to **demonstrate a good faith effort to comply with federal civil rights requirements**. Any actions taken by persons connected with CDBG program activities or by the grantee to carry out equal opportunity and fair-housing requirements should be documented in your CDBG Civil Rights Program files.

Keep records in your CDBG *Civil Rights File* concerning the following six areas of civil rights responsibility:

1. **PROGRAM BENEFITS:** efforts to ensure minority participation in the program;
2. **GRANTEE HIRING AND EMPLOYMENT PRACTICES:** the community's affirmative action plan and activities initiated to extend employment opportunities to minorities and women;
3. **CONTRACTOR AFFIRMATIVE ACTION:** actions by contractors and subcontractors to employ minorities and women.
4. **FAIR HOUSING**

5. **ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING:** compliance with the federal mandate to administer all programs so as to affirmatively further housing availability, and to prevent discrimination in federally-assisted housing; and
6. **HANDICAPPED ACCESSIBILITY REQUIREMENTS:** actions taken to ensure access by persons with physical and mental disabilities to federally assisted programs and activities.

## 1. **PROGRAM BENEFITS**

**Title VII of the Civil Rights Act of 1964** prohibits discrimination in any federally assisted program on the basis of race, color or national origin.

**Section 109 (of Title I of the Housing and Community Development Act of 1974,** <http://www.hud.gov/offices/fheo/FHLaws/109.cfm>) prohibits discrimination and denial of program benefits on the basis of sex, age, or handicap. Portions of the CDBG regulations relating to equal opportunity require grantees to document administrative methods designed to ensure nondiscrimination in project activities, in site selection criteria designed to benefit minorities, and any actions taken to overcome the effects of past discrimination.

**Section 3 of the *Housing and Urban Development Act of 1968*** provides that, to the greatest extent feasible, opportunities for training and employment should be given to low and very low-income residents and businesses in the CDBG-assisted area. **Demonstrating compliance with the Section 3 requirements and providing documentation of that compliance is *required* of all CDBG grantees.** (See **Exhibit 9-L**, Section 3 Summary Report: Economic Opportunities for Low- and Very Low-Income Persons). For more about Section 3, also see: <http://www.hud.gov/offices/fheo/section3/section3.cfm>

One of the easiest ways to demonstrate **Section 3 efforts** is to publish a notice in the area newspaper before advertising for construction bids. **Exhibit 5-B**, *Sample Section 3 Public Notice*, contains a sample form the grantee can use to inform the community of prospective employment and business opportunities. This notice should be published at least once to ensure that the community has a reasonable opportunity to hear about the potential benefits of the CDBG project.

**Language in Exhibit 5-C pertaining to Section 3's civil rights requirements must be included in all requests for proposals, bid documents, and contracts.** Place the advertisements in publications having a circulation among minority groups in the area of the project to ensure that potential contractors are aware that whenever possible they should be hiring and buying locally, thus extending CDBG benefits into the grantee's community. The notation, *An Equal Opportunity Employer*, should be included on your letterhead when it is used for CDBG project-related correspondence.

**In addition, grantees are required to keep a running tabulation of the race and gender of households in any direct benefit program -- such as families assisted through housing rehabilitation or jobs provided to individuals through an economic development project.** (See **Exhibit 5-D**, *Individual Direct Benefit Recording Form to be Completed by Head of Household* and **Exhibit 5-E**, *Direct Benefit Summary Data form*).

Documentation of Section 3 compliance efforts need to be included in the CDBG project's Civil Rights File.

## 2. **GRANTEE HIRING AND EMPLOYMENT PRACTICES**

**A. Maintaining equal employment opportunity in hiring** under the CDBG program falls under **Title VII (*Civil Rights Act*)** and assures that there will be no discrimination in the benefits to be derived from the CDBG program including employment opportunities.

Title VII-related hiring actions that need to be undertaken (and documented in the project's Civil Rights file) to promote equal employment opportunity include data concerning the grantee's affirmative actions for equal employment opportunity, including recruitment advertising, hiring, promotions, layoffs or terminations, pay and recruitment for training.

In order to meet these Title VI obligations, several steps can be taken by the grantee to increase employment opportunities for protected groups when hiring for the CDBG program.

Efforts should include advertisements in minority newspapers such as newspapers published on the reservations (see **Exhibit 5-F** for a listing of *Tribal Newspapers and Newspapers Published Adjacent to Montana's Indian Reservations*).

Any employment advertisements published could include the following statement:

***The (... Name of Grantee ...) is an Equal Opportunity Employer.***

Other affirmative actions include notifying minority organizations located in the area of potential CDBG-related job openings and **making the agency's equal employment policies clearly known to everyone involved in hiring, promotion, and salary decisions** (see **Exhibit 5-A** for a sample *Equal Employment Opportunity Policy*). The grantee's personnel policies and procedures should be reviewed periodically to ensure compliance with these requirements.

Employment recruitment records should include a summary of the number of applicants for each position relating to the CDBG Program, and the number of applicants who are minorities, women and handicapped persons (see **Exhibit 5-G**, *Applicant Summary Sheet*).

There should also be documentation by race, gender and handicap of the number of persons interviewed and the reasons for the hiring decisions (see **Exhibit 5-H**, *Interview and Hiring Form*).

**B. Data and Documentation regarding grantee hiring and employment practices**. The CDBG grantee must maintain records documenting the following information regarding grantee employment practices:

- personnel policies;
- interview and hiring records;

- employee records (training, promotion, salary levels);
- data on overall employment of women and minorities (see **Exhibit 5-I, Grantee Employment Summary**); and
- employment data that indicates staff composition by race, sex, handicap status and national origin.

### 3. **CONTRACTOR AFFIRMATIVE ACTION**

Executive Order 11246 provides that *no person shall be discriminated against in any phase of employment under federally assisted construction contracts*. It also requires that contractors take affirmative steps to ensure fair treatment in employment upgrading, transfer, recruitment, layoffs, rate of pay and selection for training.

#### 1. **Contracting with Disadvantaged Business Enterprises (DBEs)**

In addition to Executive Order 11246, requirements concerning women-owned and minority-owned business fall within the Contractor Affirmative Action requirements. **Disadvantaged Business Enterprises (DBEs), is a term used to collectively refer to both women-owned business enterprises, and minority-owned business enterprises.**

**Grantees should encourage the prime contractors on their projects to utilize DBE firms to the maximum extent possible.** Exhibit 5-K provides a sample letter of work notification to a DBE firm. The important thing is that DBE firms have the opportunity to bid, and are be encouraged to do so.

Examples of such affirmative actions include:

- Utilizing the local media, electronic and print, to market and promote contract and business opportunities for DBEs, including placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- Developing procurement procedures that facilitate opportunities for DBEs to participate as vendors and suppliers of goods and services; including assuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;
- Developing informational and documentary materials (fact sheets, program guides, procurement forecasts, etc.) on contract/subcontract opportunities for DBEs;
- Sponsoring business opportunity-related meetings, conferences, seminars, etc., with minority and women business organizations;
- When economically feasible, (and where consistent with Montana law), dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business and women's business enterprises;
- Establishing delivery schedules that encourage participation by small and minority business and women's business enterprises;



- Utilizing the services and assistance of the U.S. Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce.
- Requiring the prime contractor to take the affirmative steps outlined in the points above if subcontracts are to be let.
- Maintaining centralized records with statistical data on the utilization and participation of DBEs as contractors/subcontractors in all CDBG-assisted program-contracting activities in the CDBG project Civil Rights file.

Minimum HUD standards require the MDOC/CDBG to establish and oversee a minority and women business outreach program that is designed to be:

- a good faith, comprehensive and continuing endeavor;
- supported by a statement of public policy and commitment published in the electronic and print media of widest local circulation;
- supported by an office and/or a key, ranking staff person with oversight responsibilities and access to the chief elected official; and
- designed to utilize all available and appropriate public and private sector local resources.

**Certification of DBEs:** The Civil Rights Bureau of the Montana Department of Transportation (MDOT) conducts investigations of minority and women-owned businesses to determine if they can be certified as DBEs. Firms meeting the six eligibility standards set forth in 49 CFR, Part 23 may be eligible to participate in the State's DBE program. Firms located outside of Montana may also apply for certification within Montana if they are already certified in their CDBG State. DBEs must apply for re-certification annually.

### **DISADVANTAGED BUSINESS ENTERPRISES (DBEs)**

All certified firms are listed in a DBE Directory that is updated periodically. This directory lists names, addresses and phone numbers of all DBEs certified in the State of Montana for transportation-related and some non-transportation-related goods and services.

When inviting project bid proposals, CDBG grantees should consult this directory and mail an announcement of all bid solicitations and Requests for Proposals to DBE firms within their region. The list can also be given to homeowners, if the owners select their own contractors.

#### **Please contact:**

**Montana Department of Transportation  
Civil Rights Bureau - DBE Program  
2701 Prospect Avenue  
P.O. Box 201001  
Helena MT 59620-1001**

**(406) 444-6337  
Fax phone: (406) 444-7685**

A current directory of Montana DBEs may also be accessed via the Internet at:  
<http://www.mdt.mt.gov/business/contracting/civil/dbe.shtml>

**Exhibit 5-J, *Contract Reporting Form***, is used to document DBE Contract Awards for activities of \$10,000 or more. **The form should be completed at the time of bid award and updated if additional contractors or subcontractors perform work on the project involving activities of \$10,000 or more.** These forms should be kept in the CDBG Civil Rights File and are to be included as part of the final program closeout report.

In some communities, particularly smaller, rural ones, Section 3 commitments to use local businesses may seem to conflict with commitments to use minority and women-owned firms because no minority or women-owned firms exist within the community. However, if the community makes reasonable efforts to solicit bids from appropriate local firms and also from DBE firms beyond the limits of their county (and documents these efforts), it is meeting both objectives and it may then select the lowest and best bidder.

**2. Data and Documentation concerning contracting with Disadvantaged Business Enterprises (DBEs).** Responsibilities of CDBG grantees include:

- Maintaining copies of notices of bid solicitations and *Requests for Proposals* in the CDBG Program Management File.
- Keeping copies of *Requests for Proposals* and bid packages for individual projects in the appropriate CDBG Project File.
- Retaining data on the dollar amount of contract awards to DBE firms in the CDBG Civil Rights File.
- Including equal opportunity clauses in all bid specifications and contracts.
- Providing EEO notices for contractors to post in the workplace (see **Exhibit 5-L**, sample *Equal Employment Opportunity Poster*). Keep copies in your CDBG Civil Rights Program file.
- Including DBE firms in bid solicitation and *Request for Proposal* lists. Keep documentation in the CDBG Civil Rights File).
- To the extent feasible, making employment and business opportunities available to project area residents. Keep documentation in the CDBG Civil Rights File.

**4. FAIR HOUSING**

**Federal law obligates all grantees, regardless of project type or size, to take steps to “affirmatively further fair housing.”** Fair housing means that no person shall be subjected to discrimination (because of race, color, religion, sex, handicap, familial status, or national origin) in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

Specifically, it is unlawful to:

- refuse to sell or rent a dwelling, or to negotiate for the sale or rental of a dwelling;
- discriminate in the terms, conditions or privileges involved in a sale or rental;
- engage in any conduct relating to the provision of housing that otherwise makes unavailable or denies dwellings;
- make, print or publish, or cause to be made, printed or published, any notice, statement or advertisement (or make any oral statement) that indicates any illegal preference or limitation;
- select media or locations for advertising that deny particular population segments access to information about housing opportunities;
- impose different sales prices or rental charges upon a dwelling;
- use different qualification criteria or sale or rental standards or procedures (such as income standards, credit analyses, etc.);
- represent to any person that a dwelling is not available for sale or rental when such dwelling is in fact available;
- discourage any person from inspecting, purchasing or renting a dwelling (by exaggerating drawbacks, failing to inform them of desirable features, limiting information regarding suitably priced dwellings available for sale or rental, or communicating that he or she would not be comfortable or compatible with existing residents);
- engage in blockbusting practices (inducing property owners to sell hastily or at a loss, by appeals to fears of depressed property values or other undesirable neighborhood consequences because of threatened minority encroachment, with the intention to resell at inflated prices);
- deny access to or membership or participation in any multiple-listing service, real estate brokers' association, or other service organization or facility;
- limiting the use of privileges, services or facilities associated with a dwelling;
- assign any person to a particular section of a community or to a particular floor of a building;
- refuse to provide municipal services or property or hazard insurance for dwellings or to provide such services or insurance differently;
- discriminate in the making of loans or the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings;

- fail to make repairs or delaying maintenance or repair of sale or rental dwellings; or
- evict tenants because of race, color, religion, sex, handicap, familial status, or national origin.

**Fair housing provisions apply to the community as a whole  
-- not just to CDBG-supported housing projects --  
and they are an essential part of the community's CDBG responsibilities.**

**Developing a local fair housing program:** The first step in developing a local fair housing program is to look closely at the community to identify areas of particular concern. In order to analyze whether a fair housing problem might exist within their community, grantees should ask themselves the following questions:

- ✓ Do all or most of the minorities in your community live in one neighborhood?
- ✓ Does it appear that Realtors are hesitant to show minorities rental or ownership units in certain areas of town or in certain apartment buildings or subdivisions?
- ✓ Is there evidence that local banks and savings and loans consistently fail to provide mortgage money or CDBG improvement loans in certain areas of town?
- ✓ Do landlords rent to single parent households with children?
- ✓ Does the community actively assist people who believe they have encountered housing discrimination?

**Fair housing** means that no person shall be subjected to discrimination (because of race, color, religion, sex, handicap, familial status, or national origin) in the sale, rental, or advertising of dwellings, in the provision of brokerage services, or in the availability of residential real estate-related transactions.

**Federal law obligates all grantees, regardless of project type or size, to take steps to "affirmatively further fair housing."**

## **5. ACTIONS TO AFFIRMATIVELY FURTHER FAIR HOUSING**

CDBG grantees are **required to affirmatively further fair housing in their community in soliciting renters, determining eligibility, and in the conduct of all transactions.**

**Each grantee must affirmatively further fair housing according to the regulations contained in 24 CFR §570.904(c).** The sample list of actions below is suggestive of the types of fair housing activities that may be undertaken by communities.

- ***Passing a fair housing resolution*** is an action CDBG grantees can take to demonstrate a "good faith effort" to comply with the fair housing requirement. The fair housing resolution adopted by a CDBG grantee must also be publicized and promoted within the community. **As part of project start-up activities, grantee communities must adopt and publicize a**

**fair housing resolution** similar to that contained in **Exhibit 5-M**, sample Fair Housing Resolution (keep a copy in your CDBG Civil Rights File).

- **Review project activities** to ensure that they serve low and very low-income minority residents as well as non-minorities.
- **Develop a public information network concerning fair housing** using local newspapers, radio stations, bulletin boards, churches, and property tax mailings to ensure that all segments of the community are aware of fair housing requirements, especially Realtors, landlords, financial institutions, and minority households.
- **Develop a fair housing assistance program** to make housing opportunities known to minorities, to monitor compliance, and to refer discrimination complaints to the proper authorities.
- **Conduct a meeting with financial institutions** that serve the community to discuss the importance of providing financial assistance for housing in all geographic areas and to all residents in the community.
- **Survey special housing needs of minorities and women** to determine possible effects of discrimination.
- **Use the "Equal Housing Opportunity" slogan and logo** on grantee letterhead; and
- **Display Fair Housing Posters** (see **Exhibit 5-N**) and **distribute a Fair Housing Handout and Complaint Pamphlet** (see sample in **Exhibit 5-O**) to explain fair housing rights, practices and statutory requirements.
- Additional HUD guidance: "Performance Review Standards for Fair Housing Requirements in the CDBG Program"  
<http://www.hud.gov/offices/cpd/communitydevelopment/rulesandregs/memoranda/choice92.cfm>

**Data and Documentation.** The CDBG grantee must document the steps it has taken to promote fair housing. Keep these records in the CDBG Civil Rights File.

When developing a fair housing/affirmative marketing program, it is very important that the grantee **document all of the actions taken -- as well as the results of those actions**. If these efforts are not documented, MDOC will be unable to demonstrate to HUD that grantees are meeting their fair housing obligations.

MDOC/CDBG and grantees with housing projects will assess affirmative marketing efforts of owners by comparing predetermined occupancy goals (based on the area from which potential tenants will come) to actual occupancy data the owner is required to maintain. Outreach efforts on the part of the owner will also be evaluated by reviewing marketing efforts.

## **6. HANDICAPPED ACCESSIBILITY REQUIREMENTS**

Three major federal laws specify handicapped accessibility requirements for federally funded programs and activities. These are:

- 1) Section 504 of the *Rehabilitation Act of 1973*,
- 2) the *Americans with Disabilities Act (ADA) of 1990*, and
- 3) the *Fair Housing Amendments Act of 1988*.

The Rehabilitation Act was enacted in 1973 and last amended in 1986. It was not until June 2, 1988, that HUD published its final rule in the *Federal Register* for implementation of Section 504 (24 CFR, Part 8, *Nondiscrimination based on handicap in federally-assisted programs and activities of the Department of Housing and Urban Development*).

Implementing regulations for Fair Housing provisions are located at 24 CFR, Part 100, *Discriminatory Conduct under the Fair Housing Act* (under subpart D, *Prohibition Against Discrimination Because of Handicap*). The ADA became law on July 26, 1990 and became fully effective on January 26, 1992. **ADA:** <http://www.usdoj.gov/crt/ada/adahom1.htm>

**The implications of Section 504 of the *Rehabilitation Act* are that grantees receiving CDBG funds must ensure handicap accessibility to programs, services and benefits.** Grantees must ensure that CDBG programs and activities are accessible, both structurally and administratively, to handicapped and disabled persons. Grantees who apply on behalf of sub-grantees or non-profits must also ensure that the sub-grantee's programs and activities are accessible, both structurally and administratively.

**The purpose of the ADA** is to extend to disabled persons the civil rights that are now available to groups protected under the *Civil Rights Act* (i.e., race, color, sex, national origin, and religion). **Integration of individuals with disabilities into the mainstream of society is the fundamental purpose of the ADA.**

Under the ADA, **an individual is considered disabled if they:**

*have a physical or mental impairment that substantially limits one or more major life activities such as hearing, seeing, speaking, walking or learning.* The term also applies to someone with a record of impairment, such as a history of cancer or alcoholism (but it does not apply to current drug or alcohol abusers). It also includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, and skin and endocrine; as well as any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

This definition **“of disabled individual” includes** persons who do not perceive themselves as disabled or handicapped, but who **are perceived by others as having a disability** (e.g., a person disfigured in an accident, someone with AIDS, or someone living with or associated with a person who has AIDS).

**To meet the ADA requirements**, grantees must:

- **Conduct A Self-evaluation:** Grantees must conduct a self-evaluation (an informal accessibility survey) to determine whether their facilities and programs are in compliance with ADA requirements.

In determining whether facilities meet federal accessibility requirements, grantees should refer to the *Uniform Federal Accessibility Standards* (UFAS) [see 24 CFR, Part 40, Appendix A].

Advocacy groups for handicapped and disabled persons should be encouraged to participate in this process of self-evaluation, and documentation of this process must be maintained. The self-evaluation plan will be reviewed during the MDOC/CDBG on-site monitoring visit.

- **Develop An ADA Transition Plan:** Following the self-evaluation described above, the grantee must develop a transition plan to outline the steps the grantee intends to take to correct any deficiencies.

The grantee must also set a specific date in its transition plan by which the facilities and programs will be brought into full compliance.

If the grantee's facilities are not immediately accessible, it simply means that the grantee must find some means of making CDBG program activities and services accessible to persons with disabilities.

- **Appoint A Local ADA Compliance Coordinator:** The grantee should appoint a coordinator to ensure ADA compliance within the agency.
- In addition, **the CDBG grantee must adopt and post a Complaint Resolution Procedure that allows for prompt and equitable resolution of charges alleging non-compliance with ADA.**

The complaint procedure must allow current employees, applicants or members of the public who believe they have been discriminated against on the basis of a disability to report the incident. (See **Exhibit 5-R** for a sample *Complaint Resolution Procedures* that could be used to meet Section 504 and ADA requirements). Notice of these procedures must be posted in all work areas and must be visible to the public.

**Montana CDBG has not adopted specific required forms for use by CDBG grantees in completing their self-evaluations, transition plans, and complaint resolution procedures.** However, a number of organizations have prepared publications that can assist in this process. The following is a partial listing of such resources:

- ❑ *Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, Transportation Facilities, and Transportation Vehicles*, U.S. Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, Suite 1000, Washington DC, 20004-1111, (202) 272-5434.

- ❑ *Americans with Disabilities Act Self-Evaluation/Transition Plan Guidebook*, The Office of Intergovernmental Assistance, 14th Floor, State Capitol, 600 E Boulevard Avenue, Bismarck ND, 58505-0170.
- ❑ *Americans with Disabilities Act Accessibility Guidelines Checklist for Buildings and Facilities*, U.S. Architectural and Transportation Barriers Compliance Board, 1331 F Street NW, Suite 1000, Washington DC, 20004-1111, (202) 272-5434.
- ❑ *ADA Title II Action Guide for State and Local Governments*, Adaptive Environments Center, Inc., National Institute on Disability and Rehabilitation Research, LRP Publications, Horsham PA 19044-0980.
- ❑ Note: For National and State contacts for ADA Information and Assistance, see **Exhibit 5-T**.

HUD does **not** require grantees to take actions that would (a) result in a fundamental alteration of facilities or programs or (b) that would impose an undue financial or administrative burden on the grantee. However, if the public **cannot get to (or some group is not likely to get to)** the grantee's CDBG program, **reasonable accommodations must be made so that the program can be brought to persons with disabilities**. HUD recommends that administrative changes be considered before costly structural changes.

**CDBG grantees and their contractors may not discriminate against qualified individuals with disabilities.** This means that all government facilities, residential structures, programs, services, and communications must be accessible to all persons.

**CDBG grantees are responsible for providing access to handicapped / disabled persons in four basic areas (plus data and documentation):**

1. Accessible Communications
2. Access to Employment
3. Access to Program Benefits
4. Physical Accessibility to Programs; and
5. Data and Documentation.

**1. Accessible Communications for handicapped/disabled persons.** In order to ensure accessibility of program services and activities to persons with disabilities, grantees must be aware of the possibility that individuals may need to use alternative forms of communication.

When marketing its programs and services, the grantee should take the following steps:

- a. All **publications** must include a statement similar to the following:

*This document will be provided in an alternative, accessible format upon request.*

This may mean that someone in the grantee's organization will have to read the document to an individual, provide them with an audiotape of the document, or use a copier or



computer to magnify the image. In addition, some individuals may need assistance with filling out necessary forms and applications.

- b. **When setting up public meetings**, be cognizant of the fact that **the meeting room must be handicap accessible** (i.e., persons in wheelchairs must be able to maneuver through the building and into the meeting room). In addition, some individuals may have a total or partial visual or hearing impairment. Each of these situations may require some different type of accommodation.

Some examples of accommodations that can be made to assist the hearing impaired during a group meeting include assisted listening devices such as induction loops wired into a room, FM systems, and infrared systems. For a deaf person, it may be necessary to provide a qualified interpreter. An alternative would be to use closed captioning on a real time reader board.

When advertising public meetings or program services and activities, the grantee must include a written statement similar to the following:

*The (... CDBG grantee...) makes reasonable accommodations for any known disability that may interfere with a person's ability to participate in any CDBG Program service or activity. Persons needing an accommodation must notify (...who ...) no later than (...date...) to allow adequate time to make needed arrangements.*

*You may call (... telephone number ...) or write to (... address...) to make your request known. Telecommunications Device for the Deaf: TDD # (406) \_\_\_\_-\_\_\_\_. Montana Relay System for the Deaf: Dial 7-1-1 or 1-800-253-4091 to use Montana Relay.*

- c. **Use Disability Access Symbols to alert people with disabilities concerning access accommodations and information.** Place the symbols on all advertising, publicity, websites, publications, signs, etc. CDBG grantees can access the symbols via the Internet. Newly improved Disability Access Symbols produced by the Graphic Artist Guild and the National Endowment for the Arts are now online and downloadable at:

<http://www.gag.org/resources/das.php>

The twelve disability access symbols that can be found at that website may be used to promote and publicize accessibility of places, programs and other activities for people with various disabilities, and the website gives suggestions for how you can use the symbols effectively and sensitively.

- d. For purposes of communications requirements of the ADA and Section 504, grantees have access to the **Montana Relay Service and MDOC's Telecommunications Device for the Deaf (TDD)**. A Text Telephone (TTY/TDD) is an electronic device that enables people who are deaf, hard of hearing, or speech impaired to use the telephone by typing messages back and forth and reading responses on the display. A TTY is required for both parties to communicate directly, or the hearing party may call via the Montana Relay Service. Telebraille or Large Visual Displays are available for people who are blind or have low vision.

**Grantees are not required to secure their own TDDs.** Montana has in place a very sophisticated telephone relay system for the deaf, **Montana Relay**. Montana Relay makes communication by telephone simple, dependable and convenient for people who have difficulty using a standard phone. A public service offered through the state of Montana, Montana Relay enables standard telephone users to communicate with people who are deaf, hard of hearing, Deaf/Blind or speech disabled and use a TTY (text telephone) or another assistive telephone device. **Dial 7-1-1 or 1-800-253-4091 to use Montana Relay.**

<p style="text-align: center;"><b>Montana Relay</b>  <a href="http://www.montanarelay.org/">http://www.montanarelay.org/</a>  111 North Last Chance Gulch  P.O. Box 4210  Helena, Montana 59604  1-866-RELAY-MT (1-866-735-2968)  Fax: 406-444-5999</p>
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A deaf person, or a person wishing to communicate with a deaf person, can call a toll-free number to access any city in the United States. An operator types in the conversation to the hearing-impaired person, who reads the message via a *Telecommunication Device for the Deaf* (TDD). The operator then reads the return message to the hearing person.

**The Montana Department of Commerce also has a TDD at the main building (301 S. Park Avenue, Helena) that can be accessed at (406) 841-2702.** Grantees may publish this MDOC phone number on publications and advertisements about their CDBG program activities.

The following organizations can be consulted for more detailed information about devices available to assist the disabled:

<p><b>Montana's Technology-Related Assistance Program for People with Disabilities (MonTECH) -- Rural Institute on Disabilities</b>  Univ of Montana, 634 Eddy Avenue  Missoula, MT 59812  1-800-732-0323</p>	<p><b>Montana Independent Living Project</b>  38 South Last Chance Gulch  Helena, MT 59601  (406) 442-5755 or 1-800-735-6457</p>
<p><b>Summit Independent Living Project</b>  1280 South Third Street West  Missoula, MT 59801  (406) 728-1630 or 1-800-398-9002  (Offices also in Kalispell, Ronan &amp; Hamilton)</p>	<p><b>ADA Regional Assistance Center-Meeting the Challenge</b>  3630 Sinton Suite 103  Colorado Springs, CO 80907-5072  1-800-949-4232</p>
<p><b>North Central Independent Living Services</b>  104 Second Street South, Suite 101  Great Falls, MT 59405  (406) 452-9834 or 1-800-823-6245</p>	<p><b>Living Independently for Today &amp; Tomorrow</b>  929 Broadwater Square  Billings, MT 59101  (406) 529-5181 or 1-800-669-6319</p>

## 2. Access to Employment for Handicapped/Disabled Persons. Title I of the ADA prohibits discrimination by an employer against a qualified person with a disability.

- a. **Employers are required to make reasonable accommodation to known physical or mental limitations of an otherwise qualified individual, unless to do so would impose an undue hardship on the employer.** Cost alone does not necessarily constitute undue hardship. A person with a disability is otherwise qualified if they can satisfy the requisite skill, experience and education requirements for the position, and *can perform the essential functions of the job with or without reasonable accommodations*. Your assigned CDBG Program Specialist can provide assistance concerning specific types of reasonable accommodations.
- b. **Essential functions are defined as those that are fundamental to the job, excluding any marginal functions of the position.** Where possible, the employer is required to make such accommodations as providing physical hardware or equipment to allow the handicapped person to complete job duties (remembering that there is often more than one way to do a job), or reassigning job tasks among workers. If grantees have questions regarding what constitutes an *essential job function* or an *undue hardship* on the employer, they should contact their assigned CDBG Program Specialist.
- c. **When recruiting, the grantee and its contractors and subcontractors must include the following written statement:**

The (grantee/contractor name) makes reasonable accommodations for any known disability that may interfere with an applicant's ability to compete in the recruitment and selection process or an employee's ability to perform the essential duties of the job. In order for the grantee/contractor to make such accommodations, the applicant must make known any needed accommodation.

You may call (... telephone number ...) or write to (... address...) to make your request known. Telecommunications Device for the Deaf: TDD # (406) \_\_\_\_\_ - \_\_\_\_\_. Montana Relay System for the Deaf: Dial 7-1-1 or 1-800-253-4091 to use Montana Relay.

CDBG grantees should use a local TDD number if possible. If no TDD is available locally, the grantee may use the above MDOC TDD number for this purpose.

If grantees do intend to utilize the MDOC TDD number, they should make sure that the assigned CDBG Program Specialist is informed regarding the details of such announcements, and that MDOC/CDBG receives copies of those announcements so that staff can competently answer questions received on the TDD about the grantee's activities.

**You cannot ask an applicant if they have a disability or ask any questions about their specific disability (including the extent, nature or severity of the disability) prior to extending a conditional offer of employment.**

**You may ask job-related questions such as, *Can you perform the essential functions of the job either with or without a reasonable accommodation?* In general, questions asked of applicants should be consistent with business necessity and they should be job-related, with the same questions asked of all applicants (e.g., conduct the same structured oral interview with the same questions for all applicants).**

**3. Access to Program Benefits for Handicapped/Disabled Persons.** Title II of the ADA specifies that **qualified individuals with disabilities are not to be excluded from participation in, or to be denied the benefits of, any services, programs, or activities funded in whole or in part with federal funds.**

- a. **A qualified individual with a disability** is one who meets the essential eligibility requirements for receipt of services or for participation in programs or activities, *with or without* a reasonable modification to rules, policies or practices; the removal of architectural, communication or transportation barriers; or the provision of auxiliary aids and services.
- b. **The basic requirement of ADA for CDBG grantees is that all services, programs and activities be accessible to everyone, including people with disabilities, regardless of the accessibility of the grantee's facilities.**
- c. **Grantees are also required to take affirmative steps to ensure that qualified persons with disabilities are informed of the availability of program services and activities; and that the grantee's activities or services are readily accessible to, and usable by, individuals with disabilities.**

Administrative changes might include scheduling activities for the handicapped at handicapped accessible locations, assigning auxiliary aides to assist handicapped clients, providing CDBG visits or on-call transportation services, and publicizing the availability of audio equipment and telecommunications devices for deaf persons (TDDs).

- d. The grantee may not provide services or benefits to disabled persons through programs that are separate or different -- unless the separate programs are necessary to ensure that the benefits or services are equally effective. **Even when separate programs are permitted, an individual with a disability must still have the right to choose to participate in the regular program, and the grantee may not require an individual with a disability to accept a special accommodation or benefit if the person chooses not to accept it.**

**4. Physical Accessibility for Handicapped/Disabled Persons to Programs.**

- a. The grantee should identify the primary access point to their office building, and ensure that parking spaces are designated for people with disabilities displaying special permits on their vehicles.
- b. In addition, the grantee needs to ensure that the accessible entrance to the building is kept accessible (i.e., free of snow and other blockage, with unauthorized persons not allowed to park in the handicap designated areas).
- c. **The Disability Services Division of the Department of Public Health and Human Services (DPHHS)** can provide information regarding specific types of reasonable accommodation: <http://www.dphhs.mt.gov/dsd/index.shtml>

<p style="text-align: center;"><b>DPHHS Disability Services Division</b> <b>111 Sanders Suite 307, PO Box 4210</b> <b>Helena, MT 59604-4210</b> <b>1-877-296-1197 (Toll free) / 406-444-2590 (voice/TDD) / 06-444-3632 (fax)</b></p>
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**DPHHS Vocational Rehabilitation offices** are located throughout the state, and their staff can assist with questions regarding reasonable accommodations.

**DPHHS Vocational Rehabilitation Program:  
(Same phone numbers as above)**

- d. **The regulations for meeting handicap accessibility requirements for housing facilities** are complex and cannot be described concisely in this chapter, so what is found in this chapter is the beginning of the information that you may need to assure handicapped accessibility for housing facilities.

The ADA generally does not cover private residential facilities. These facilities are addressed in the *Fair Housing Amendments Act*, which prohibits discrimination on the basis of disability in selling or renting housing.

However, provisions of the *Fire Administration Authorization Act of 1992*, which became effective October 26, 1992, require that **all housing units assisted with federal funds be equipped with a hard-wired or battery-operated smoke detector that includes appropriate wiring that makes it possible to install visual and/or sensory alarm systems if the need arises**. This requirement applies to all new construction, reconstruction, and rehabilitation projects on any multifamily or single-family housing assisted with CDBG funds. Further, where alarms already exist in common areas, visual and sensory alarms should be provided also, as a reasonable accommodation to persons with disabilities.

- e. As described in 24 CFR §8.4(b)(1)(iii) and (iv), it is illegal to discriminate against a handicapped person by providing:

... any housing, aid, benefit, or service that is not as effective in affording the individual an equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others ... unless such action is necessary to provide qualified individuals with handicaps with housing, aids, benefits or services that are as effective as those provided to others.

- f. **The following are highlights of other handicap accessibility requirements that apply to all facilities designed, constructed or altered after July 11, 1988:**

- I. **New Construction, Acquisition or Rehab of Single-Family Dwellings**. Single-family dwellings must be made handicap accessible upon request of the owner or prospective buyer. That cost may be included in the mortgage amount. If costs exceed the allowable mortgage limits, those costs may be passed on to the prospective CDBG buyer.

All handicap accessible dwelling units must be distributed throughout the housing project and the sites made available in a range of sizes and amenities. Generally, historic properties must be made accessible unless doing so would substantially impair the significant historic features of the property or result in an undue financial or administrative burden.

- II. **New Construction or Substantial Rehab of Multi-Family Dwelling Units.** In addition to ADA requirements, residential structures (other than privately owned residential structures) are subject to requirements of the *Architectural Barriers Act* of 1968 [24 CFR Part 40].

Standards for the design, construction and alteration of publicly owned residential structures to ensure that physically handicapped persons have ready access to and the use of such structures can be met by following the *Uniform Federal Accessibility Standards* outlined in Appendix A of 24 CFR, Part 40.

In a multi-family housing project consisting of five or more HUD (CDBG)-assisted units there must be at least five percent of the HUD-assisted units (or a minimum of 1 unit) that are accessible to persons with mobility impairments and at least an additional two percent of the units (or a minimum of one unit) accessible to persons with hearing or vision impairments -- Braille and hard wiring installed. This is a requirement of the Uniform Federal Accessibility Standards under Section 504.

Also, the Fair Housing accessibility requirements must be applied when a HUD-assisted multifamily project involves construction of four or more attached units.

All covered multi-family dwellings must be designed and constructed in such a manner that:

- the public and common use areas are readily accessible to and usable by handicapped persons;
- all doors are designed to allow passage by persons in wheelchairs;
- there is an accessible route into and through the covered dwelling unit;
- light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations;
- bathroom walls are constructed to include reinforcements to allow later installation of grab bars around the toilet, tub, shower, stall and shower seat (where such facilities are provided); and
- kitchens and bathrooms are such that an individual in a wheelchair can maneuver about the space.

- III. **Tenant-Based Rental Assistance.** Program administrators must provide notice of the availability of handicap accessible units, and include a current listing of available accessible units. In addition, they must encourage program participation by owners of accessible units.

## **5. Data and Documentation**

With respect to requirements of the *Architectural Barriers Act* grantees must be kept in each applicable CDBG Project File, documentation indicating that the standards prescribed in 24 CFR §40.4 are applicable to, and have been or will be incorporated into, the residential structure to be assisted with CDBG funds. In addition, MDOC/CDBG will include in their existing procedures for the review and approval of newly constructed or substantially rehabilitated multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with the above provisions of the Fair Housing Act.

MDOC/CDBG has incorporated into the normal grant monitoring procedures a review of the grantee's *Self-Evaluation* and *Transition Plan* for compliance with Section 504 of the *Rehabilitation Act* and the *Americans with Disabilities Act*. The grantee must certify to MDOC/CDBG in writing that their CDBG program activities are being operated in compliance with Section 504, the ADA and the Fair Housing requirements.

Each grantee must submit compliance reports to the responsible civil rights official. Documentation shall be kept to ascertain compliance.

See Section IV below for additional details of record-keeping and documentation.

#### IV. RECORD-KEEPING REQUIREMENTS

**A. The Local Project's Civil Rights File should contain the following information and records**

- ✓ Records demonstrating a *good faith effort* to comply with federal civil rights requirements.
- ✓ Records of program applicants and program beneficiaries, by race and gender. **See B, below, for an explanation of HUD data collection requirements (as revised in 2002).**
- ✓ A running tabulation of the race and gender of households in any direct benefit program, such as families assisted through housing rehabilitation or jobs provided to individuals through an economic development project. (See **Exhibit 5-D**, *Individual Direct Benefit Recording Form to be Completed by Head of Household*, and **Exhibit 5-E**, *Direct Benefit Summary Data*).
- ✓ Documentation of efforts to make CDBG program services and activities accessible to blind, deaf, and other physically and mentally handicapped persons.
- ✓ Documentation regarding steps the grantee has taken to promote fair housing. Efforts to ensure minority participation in the program (e.g., documentation of administrative methods designed to ensure nondiscrimination in project activities and in site selection criteria designed to benefit minorities, as well as actions taken to overcome the effects of past discrimination).
- ✓ Documentation of compliance with handicap accessibility requirements in housing construction and rehabilitation activities (Fair Housing Act, Section 504 of the Rehabilitation Act; and the Americans with Disabilities Act).
- ✓ Documented actions undertaken to promote equal employment opportunity, including documented efforts of the grantee's affirmative actions in equal employment opportunity (e.g., recruitment advertising, hiring, promotions, layoffs or terminations, pay and recruitment for training).
- ✓ A summary of the number of applicants for each position, and the number of applicants who are minorities, women and handicapped persons (see **Exhibit 5-G**, *Applicant Summary Sheet*).

- ✓ Documentation by race, gender and handicap of the number of persons interviewed and the reasons for the hiring decisions (see **Exhibit 5-H, Interview and Hiring Form**).
- ✓ Documentation of the following information regarding grantee employment practices:
  - ✓ personnel policies
  - ✓ interview and hiring records
  - ✓ employee records (training, promotion, salary levels)
  - ✓ data on overall employment of women and minorities (**Exhibit 5-I, Grantee Employment Summary**)
  - ✓ employment data that indicates staff composition by race, sex, handicap status and national origin;
  - ✓ documented actions undertaken to promote equal opportunity in bidding and contracting for services and products from DBE firms; and
  - ✓ Data recording the grantee's affirmative actions to encourage the participation of DBE firms.

**B. Data Collection Requirements for Ethnicity and Race from HUD and the Office of Management and Budget (as Revised in 2002)**

In 2002, the State of Montana and all the states received notification from HUD that revised grantee data collection and reporting requirements that been established for HUD (which includes CDBG, HOME and other HUD-funded projects) by the Office of Management and Budget.

Under the revised current policy for data collection, HUD projects must:

- a) offer respondents the option of selecting a self-description from HUD's new set of racial categories (the list is given below);
- b) treat ethnicity as a category separate from race; and
- c) use some new terminology that has been adopted for certain racial groups and ethnic groups.

The changes announced in 2002 mean that:

- 1) In CDBG projects which have direct benefits to individuals and households, CDBG grantees must now ask clients to identify their ethnicity prior to asking them to identify their race. See item 6 below.
- 2) For CDBG local project activities that require gathering ethnicity and race data from individuals or households (such as housing rehabilitation for individual families, payment of water-system/sewer system hook-up fees or assessment fee for LMI households), the use of the new race/ethnicity categories is required (see CDBG revised *Exhibit 5-D, Individual Direct Benefit Recording Form to be Completed by Head of Household*). Exhibit 5-D includes the revised ethnic and racial categories required by HUD – use it to collect data from individuals and households receiving direct assistance, if any, in your local CDBG project.
- 3) There are now ten racial categories (see the list given below) and two ethnic



categories (also listed below) that must be used in gathering this data from individuals receiving direct benefit assistances.

- 4) The CDBG program created revised *project completion reports* (see Chapter 13) that reflect the additional race and ethnicity categories.
- 5) HUD set April 1, 2004 as the deadline to transition to the new categories for CDBG contracts/projects that were in progress at the time the change announcement was issued – such projects were instructed need to go back to the individuals and households and gather the ethnic and racial data that is needed.
- 6) Grantees should use a two-question format, meaning that separate questions for race and ethnicity should be used. Both questions must be answered. The **ethnicity question** should **precede** the **race question**.
- 7) See **Exhibit 5-D, Individual Direct Benefit Recording Form to be Completed by Head of Household**, for a form that you can use to ask the ethnicity and race questions, using the new HUD list:

**Ethnicity:** (select only one)

- i. Hispanic or Latino (HL)
- ii. Not Hispanic or Latino (NHL)

**Race:** (select one or more)

1. White
2. Black or African American
3. Asian
4. American Indian or Alaskan Native
5. Native Hawaiian or Other Pacific Islander
6. American Indian or Alaskan Native *and* White
7. Asian *and* White
8. Black or African American *and* White
9. American Indian or Alaskan Native *and* Black or African American
10. Other Multi-racial (balance of individuals reporting more than one race)

*Note:* Self-reporting or self-identification by the individuals receiving the assistance (rather than observer identifications) is the preferred method for collecting race and ethnicity data. Self-identification for race and ethnicity means that responses are based on self-perception.

## **CHAPTER 5**

### **EXHIBITS**

- 5-A      Sample Equal Employment Opportunity Policy**
- 5-B      Sample Public Notice for Section 3 Responsibilities (Economic Opportunities for Low- and Very Low-Income Persons)**
- 5-C      Required Contract Language for Section 3 Responsibilities**
- 5-D      Individual Direct Benefit Recording Form to be Completed by Head of Household**
- 5-E      Direct Benefit Summary Data**
- 5-F      Tribal Newspapers and Newsletters and Newspapers Published Adjacent to Montana's Indian Reservations**
- 5-G      Applicant Summary Sheet**
- 5-H      Interview and Hiring Form**
- 5-I      Grantee Employment Summary**
- 5-J      Contract Reporting Form and Instructions (same as Exhibits 9-K and 13-E)**
- 5-K      Sample Letter of Work Notification to a DBE Firm**
- 5-L      Sample Equal Employment Opportunity Poster**
- 5-M      Sample Fair Housing Resolution**
- 5-N      Sample Fair Housing Poster**
- 5-O      Sample Fair Housing Handout and Complaint Pamphlet**
- 5-P      Sample Housing Program Notice**
- 5-Q      Sample Hatch Act Resolution**
- 5-R      Sample Section 504 and ADA Complaint Resolution Procedures and ADA Complaint Form**
- 5-S      Sample ADA Self-Evaluation Inventory and Transition Plan**
- 5-T      National and State Contacts for ADA Information and Assistance**
- 5-U      Civil Rights Responsibilities Checklist**